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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,460	07/14/2005	Paul David Sherring	PABE200001	1462
27885	7590	10/17/2006	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			BENNETT, ZAHRA I	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/542,460	SHERRING, PAUL DAVID
	Examiner Zahra Bennett	Art Unit 2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 August 2006.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 16-31 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 16,20-22,23/16,23/21,25/16,25/21,26,27,28/16,28/21,29/16,29/21,30,31 is/are allowed.  
 6) Claim(s) 17,23/16,23/17,24/16,24,25/16,25/17,28/16,28/17,29 is/are rejected.  
 7) Claim(s) 18 and 19 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 14 July 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 9/6/2006 & 9/07/2006.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

**DETAILED ACTION*****Information Disclosure Statement***

The information disclosure statement (IDS) submitted on January 12, 2006 was filed after the mailing date of the Office Action mailed on December 29, 2005 and applicant's deposit account has been charged accordingly. The submission is not in complete compliance with the provisions of 37 CFR 1.98(a)(3) and MPEP § 609 because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. The information disclosure statement has been placed in the application file, but the information in the Foreign documents has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

The US Patent documents on the information disclosure statement are being considered by the examiner.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17, 19, and 23/17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chien (US Patent 5,806,960) in view of Daniel (US Patent 4,667,274) and Vega et al. (US Patent 6,464,369).

With respect to claim 17, Chien teaches a reflector provided for distributing light from the first electroluminescent portion over the diffuser (Column 5, lines 33-44). Chien does not teach that the reflector is spaced apart from the diffuser. Daniel teaches a reflector (Figure 2: 28, see Column 3, lines 55-63) spaced from apart from the diffuser (40, Column 6, lines 10-12). It would have been obvious to one of ordinary skill at the time of the invention to have a curved reflector on the device of Chien for the benefit of providing uniform light distribution, as taught by Daniel.

Chien also does not teach that the reflector is convex. Vega teaches a convex reflector (Figure 5: 36). It would have been obvious to one of ordinary skill at the time of the invention to have a convex reflector on the device of Chien for the benefit of reflecting light outward, as taught by Vega.

With respect to claim 23/17, Chien teaches that the attachments means (Figure 1: 17) are arranged so as to detach (by means of 17", see Column 5, lines 23-32) the indicator from the helmet in the event of an impact.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chien, Daniel and Vega as applied to claims 17 and 23/17 above, and further in view of Dugmore (US Patent 6,457,838).

With respect to claim 24, Chien, Daniel, and Vega do not teach a magnetic attachment means. Dugmore teaches that the attachment means includes cooperating magnetic elements associated respectively with the base portion of the body and with the helmet (Figure 6, see Column 3, lines 5-9). It would have been obvious to one of ordinary skill at the time of the invention to have a magnetic attachment means on the device of Chien for the benefit of detachably mounting the device, as taught by Dugmore.

Claim 25/17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chien, Daniel, Vega, and Dugmore as applied to claims 17, 23/17, and 24 above, and further in view of Kotary et al. (US 6,554,447).

With respect to claim 25/17, Chien, Daniel, and Vega do not teach that the base has a curvature between 90mm and 490mm. Kotary teaches a base portion that has a radius of curvature between 90mm and 490mm (Column 3, lines 31-38). It would have been obvious to one of ordinary skill at the time of the

invention to have the base of Chien include a curvature between 90mm and 490mm for the benefit of conforming to a device, as taught by Kotary.

Claim 28/17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chien, Daniel, and Vega as applied to claim 17 above, and further in view of Chien (US Patent 5,479,325).

With respect to claim 14, Chien, Daniel, and Vega do not teach a flexible seal. Chien ('325) teaches a flexible seal (Figure 10: 45 and 46) which in use conforms to the contours of the helmet (Figure 1: 18). It would have been obvious to one of ordinary skill at the time of the invention to have the device of Chien ('960) include a flexible seal for the benefit of conforming to the helmet, as taught by Chien ('325).

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chien ('960), Daniel, Vega, and Chien ('325) as applied to claims 17 and 28/17 above, and further in view of Appiah (US Patent 6,752,510).

With respect to claim 29, Chien ('960), Daniel, Vega, and Chien ('325) do not teach that indicators are arranged on opposite sides. Appiah teaches indicators (Figure 1: 32, 34, 36) are arranged on opposite lateral sides of the helmet (20). It would have been obvious to one of ordinary skill at the time of the invention to have the indicators of Chien arranged on opposite sides for the benefit of increasing the visibility of the user, as taught by Appiah.

***Allowable Subject Matter***

Claims 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16, 20-22, 23/16, 23/21, 25/16, 25/21, 26, 27, 28/16, 28/21, 29/16, 29/21, 30, and 31 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: Applicant has amended the claims to include indicated allowable subject matter.

***Response to Arguments***

Applicant's arguments filed August 02, 2006 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claim 3 (new claim 17) have been considered but are moot in view of the new ground(s) of rejection.

Applicant also argues that Daniel is within a baseball cap and not a helmet. Daniel does not teach that the apparatus is located on a helmet, however, Daniel's device does meet the limitation of the claims. Daniel's device is a position indicator light, which is capable of mounting on a helmet. The intended use of the claimed invention does not result in a structural difference

between the claimed invention and the prior art. Daniel's structure is capable of performing the intended use of the claimed invention.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the electroluminescent element is between a reflector and a separate diffuser) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

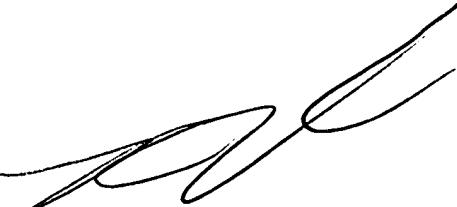
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zahra Bennett whose telephone number is 571-272-2267. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Renee Luebke can be reached on 571-272-2009. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ZB



RENEE LUEBKE  
PRIMARY EXAMINER